

**Congress of the United States**  
**Washington, DC 20515**

June 8, 2023

The Honorable Chiquita Brooks-LaSure  
Administrator  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard  
Baltimore, MD 21244

Dear Administrator Brooks-LaSure,

We are writing today to raise our concerns about the state of Medicaid eligibility redeterminations and implications for the unwinding of the Medicaid continuous enrollment provision. We are troubled by early reports that suggest that some states in the first month of redeterminations have disenrolled hundreds of thousands of individuals for procedural reasons, rather than because they were found to be no longer eligible.<sup>1</sup> We are equally troubled that many of those individuals who have lost coverage are children, including newborns.<sup>2,3</sup> We appreciate the Centers for Medicare & Medicaid Services (CMS) for taking swift action to monitor state unwinding efforts and strong intention to protect coverage among eligible people. We urge CMS to take timely enforcement action to prevent improper terminations and take other appropriate actions detailed below.

In March 2020, as the pandemic was in its early days, Congress acted quickly to ensure that low-income families maintained their health insurance for the duration of the public health emergency (PHE). Among the most crucial protections of coverage were the maintenance of effort (MOE) provisions from the *Families First Coronavirus Response Act* (FFCRA, PL 116-127). The MOE required, among other things, that states not disenroll nearly anyone from Medicaid for the duration of the PHE. As a result of this requirement, the nation's uninsured rate dropped to the lowest level in its history and tens of millions of Americans were able to access health care during the pandemic.

In 2022, Congress passed the *Consolidated Appropriations Act, 2023* (PL 117-328) which provided states and CMS with the resources and tools necessary to resume redeterminations for the more than 80 million Medicaid beneficiaries currently enrolled. Congress provided states with the certainty they requested regarding the end of the MOE, and the financial resources through the end of the year to support their redetermination efforts. Congress also provided CMS with enhanced enforcement tools to ensure states are taking the necessary steps to protect beneficiaries. The law also required states to regularly report data aimed to help

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<sup>1</sup> Weiland, Noah, *Hundreds of Thousands Have Lost Medicaid Coverage Since Pandemic Protections Expired*, New York Times, May 26, 2023 (<https://www.nytimes.com/2023/05/26/us/politics/medicaid-coverage-pandemic-loss.html>).

<sup>2</sup> Arkansas Department of Human Services, *Arkansas Department of Human Services Releases First Report On Medicaid Unwinding Following The Public Health Emergency*, May 8, 2023 (<https://humanservices.arkansas.gov/news/arkansas-department-of-human-services-releases-first-report-on-medicaid-unwinding-following-the-public-health-emergency/>).

<sup>3</sup> Florida Unwinding Month Report, April 2023 (<https://ccf.georgetown.edu/wp-content/uploads/2023/05/Florida-Unwinding-Monthly-Report-April-2023-2.pdf>).

identify early problem areas that could threaten beneficiary access to care. Unfortunately, CMS has not yet made this data publicly available and has not yet committed to a timeline to ensure that data is publicly available in a timely manner.

States and governors are ultimately responsible for the proper administration of Medicaid redeterminations. However, the early evidence from many states on redetermination efforts is concerning and suggests that beneficiaries are experiencing red tape, confusion and high rates of procedural terminations. One disturbing report described a family of a 5-year-old with cancer spending hours on the phone with Florida's Medicaid agency to determine if their son had lost coverage after the website indicated he had.<sup>4</sup> Arkansas has stated its goal is to move as fast as possible.<sup>5</sup> Unfortunately, the early data suggests that the speed with which Arkansas is moving has caused many to fall through the cracks. In just the first month of redeterminations, Arkansas reported 72,802 beneficiaries had lost Medicaid coverage – 40 percent of whom were children and 72 percent of whom lost their coverage for procedural reasons.<sup>6</sup> Similarly, in the first month of redeterminations in Florida, over half of people whose eligibility was checked were terminated – a staggering 250,000 individuals.<sup>7</sup> Over 80 percent were for procedural reasons and most are likely to be children and parents given that Florida has not expanded Medicaid to adults.<sup>8</sup> These numbers are staggering and suggest excessively high rates of denials on procedural grounds that could severely harm access to care for children.

While some governors may find it politically expedient to move as quickly as possible to take health insurance away from people, the law established a number of beneficiary protections states must comply with in order to continue to receive enhanced funding, including maintaining current eligibility standards through 2023, conducting Medicaid eligibility redeterminations in accordance with all applicable federal requirements, attempting to ensure they have up-to-date contact information for a beneficiary before redetermining their eligibility, and undertaking a good-faith effort to contact an individual using more than one modality prior to terminating their enrollment on the basis of returned mail. It also empowers CMS with additional enforcement tools to ensure that states are not improperly removing Medicaid beneficiaries, including requiring a state to implement a corrective action plan, imposing financial penalties, and requiring states to pause disenrollments on procedural grounds. These additional tools give CMS the means to ensure states are held accountable for complying with federal law, and step in to protect vulnerable populations from being improperly disenrolled from Medicaid. We urge you to move swiftly to use these tools to prevent more coverage losses among eligible children and adults in Florida, Arkansas, and other states.

As you know, the law requires that states be in compliance with all current laws and regulations related to redetermining beneficiary eligibility as a condition of receiving the

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<sup>4</sup> Seitz, Amanda, *Kicked off Medicaid: Millions at risk as states trim rolls*, AP News, April 28, 2023 (<https://apnews.com/article/medicaid-enrollees-removed-review-health-insurance-pandemic-bffc3c67ab2767e4e3cea8250683ea7a>).

<sup>5</sup> Id.

<sup>6</sup> See note 2.

<sup>7</sup> Alker, Joan, *How Many Children Just Lost Coverage in Florida?* Georgetown University Health Policy Institute Center for Children and Families, May 16, 2023 (<https://ccf.georgetown.edu/2023/05/16/how-many-children-just-lost-coverage-in-florida/>)

<sup>8</sup> Id.

enhanced funding under the Consolidated Appropriations Act, 2023. We would like to understand the level of compliance with these requirements, including related to *ex parte* renewals, sending out pre-populated forms for beneficiary renewals, and ability for beneficiaries to renew online.

While we are pleased that CMS and many states have taken swift action to commit to mitigating these problems, and that CMS intends to put states on a path to compliance over two years, this raises important questions about the state of Medicaid eligibility redeterminations and its implications for the unwinding. We will want to continue to work with CMS to ensure that compliance is actually achieved in every state.

As the Ranking Member of the Energy and Commerce Committee and the Chairman of the Senate Committee on Finance, which have sole jurisdiction over Medicaid, we are requesting additional documentation and written responses to the following:

1. A list of the states that were identified as being out of compliance with Medicaid redetermination requirements;
2. Copies of the state risk mitigation plans approved by CMS;
3. An immediate release of the initial redeterminations data that states are required to submit;
4. When CMS requires a state to implement a corrective action plan, as required by the CAA and underlying CMS authority, and what criteria will CMS use to determine when it is appropriate to take enforcement action, such as requiring a state to pause disenrollments for procedural reasons; and
5. Information on an ongoing basis for any state that requires a corrective action plan as well as the status of the implementation of that corrective action plan.

Thank you for your hard work at ensuring that states comply with federal requirements that prioritize protecting beneficiary access to health coverage. If you have any questions, please contact Rick Van Buren of the Energy and Commerce Committee staff at 202-225-2927 and Marielle Kress of the Finance Committee staff at 202-224-4515.

Sincerely,



Frank Pallone, Jr.  
Ranking Member  
House Committee on Energy and Commerce



Ron Wyden  
Chairman  
Senate Committee on Finance

cc: The Honorable Xavier Becerra, Secretary, Department of Health and Human Services